

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COAMOXICLAV
PRODUCTS, POTASSIUM
CLAVULANATE PRODUCTS, AND
OTHER PRODUCTS DERIVED FROM
CLAVULANIC ACID**

Inv. No. 337-TA-479

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND AFFIRM IN PART,
REVIEW AND REVERSE IN PART, AND REVIEW AND REMAND IN PART, AN
INITIAL DETERMINATION GRANTING A MOTION FOR SUMMARY
DETERMINATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and affirm in part, review and reverse in part, and review and remand in part, an initial determination ("ID") of the presiding administrative law judge ("ALJ") in the above-captioned investigation granting a motion for summary determination of no violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3094. Copies of the Commission's order, the Commission's opinion in support thereof, the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 5, 2002, on the basis of a complaint filed by GlaxoSmithKline Corporation plc and

SmithKline Beecham Corp. (“complainants”) alleging a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain coamoxiclav products, potassium clavulanate products, and other products derived from clavulanic acid, by reason of misappropriation of trade secrets and unfair competition. 67 *Fed. Reg.* 57850 (September 12, 2002). The respondents are Biochemie GmbH, Biochemie SpA, and Geneva Pharmaceuticals, Inc. (collectively “movants”), and Novartis AG. Complainants alleged that respondents, in their production of the products subject to this investigation, are using a bacterial strain of *Streptomyces clavuligerus* known as SC7 that was stolen from complainants by one of complainants’ employees in the United Kingdom.

On January 28, 2003, the movants moved for summary determination of no violation of section 337, arguing that (i) complainants are barred from pursuing their claims against respondents because of a 1998 settlement agreement (the “Settlement Agreement”); (ii) complainants had relinquished the trade secret status of SC7 because they did not take reasonable measures to preserve the secret; and (iii) complainants’ claim of conversion was preempted under trade secret law. The motion was opposed by complainants and the Commission investigative attorney (“IA”).

On March 6, 2003, the ALJ issued an ID (Order No. 7) in which he granted summary determination and terminated the investigation as to all respondents.

On March 20, 2003, complainants and the IA filed petitions for review. On April 3, 2003, movants filed a response to these petitions. On March 19, 2003, the Commission extended its 30-day deadline for determining whether to review the ID by 21 days, or until April 28, 2003.

The Commission determined to review and reverse the subject ID insofar as it grants summary determination and terminates this investigation. The Commission found that there are genuine issues of material fact with respect to the ALJ’s findings that (a) the Settlement Agreement is unambiguous in granting respondents immunity from the claims in this case; and (b) complainants failed to undertake efforts that were reasonable under the circumstances to maintain the secrecy of SC7 and thereby relinquished the trade secret status of SC7. The Commission further determined to (a) review and remand the subject ID insofar as it holds that and complainants’ conversion claim is preempted by trade secret law; and (b) review and affirm the subject ID insofar as it holds that movants are not estopped from relying on the Settlement Agreement.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.45 of Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.45.

By order of the Commission.

Marilyn R. Abbott
Secretary

Issued: April 29, 2003